Consumer Finance Monitor (Season 3, Episode 10): A Discussion of the Veterans and Consumers Fair Credit Act with Bill Himpler, CEO of the American Financial Services Association

Speakers: Alan Kaplinsky and Bill Himpler

Alan Kaplinsky:

Welcome to the Consumer Finance Monitor Podcast, where we explore important new developments in the world of consumer finance. And we explain what they mean to your business, your customers, and the industry at large. I'm your host today, Alan Kaplinsky. I am a partner and I'm the Head of the Consumer Financial Services Group at Ballard Spahr.

Alan Kaplinsky:

And I just want to remind those of you listening to our podcast, perhaps for the first time that we also have a blog, which is called Consumer Finance Monitor. And there is a lot of content on that blog, including a lot of information about the topic that we're going to be talking about today. We've been doing our blogs since 2011. We also regularly host webinars on subjects of interest to those of you within the consumer finance industry. So if you want us to subscribe to our blog or get on the list to receive invites for our webinars, please visit us at ballardspahr.com. Our podcasts are released generally every Thursday, except when Thursday falls on a holiday and they're available on our website, ballardspahr.com. Or you can get them on Apple Podcasts, Google Play, Spotify, or wherever you obtain your podcasts.

Alan Kaplinsky:

Well, I'm very pleased to be joined today, this is a first time appearance for Bill Himpler. Bill is the CEO of the American Financial Services Association. So first Bill, a hearty welcome to you.

Bill Himpler:

Well, it's great to be with you, Alan. And I love the introduction about all the stuff you're involved in, first, all the social media plugins that you've got. And love working as an association executive with Alan and his team. And as you were talking of, I was recalling the work we did to counter the misinformation that the Bureau was putting out a few years back, trying to ban the use of arbitration clauses, which are an essential tool for both customers and members of our industry. Folks, you've got a real pro in Alan Kaplinsky. So it's great to be with you.

Alan Kaplinsky:

Well, thank you very much, Bill. And as you know, the subject of arbitration is one that's very near and dear to my heart. And it seems like that's another subject altogether, but every time when we think that the war is over with respect to that topic, it turns out that we're mistaken. It seems like it never ends. And I have a feeling we're going to be dealing with it again, particularly if there is a change in administrations.

Bill Himpler:

Yeah, full Employment Act for you and me.

Alan Kaplinsky:

Yeah. Yeah. You got that right. So anyway, for those of you who listen religiously to our podcasts, you will know that on February 13th, we released a podcast dealing with the very same topic we're going to talk about today. Namely, a bill introduced in The House and the Senate, House Bill H.R.5050 in The House and in the Senate, 2833, it was introduced on November 12th of last year. And it's called the Veterans and Consumers Fair Credit Act. And I had as my guest Professor Chris Peterson from the University of Utah School of Law. Chris, as I'm sure many of our listeners know is a very strong consumer advocate. He in fact takes credit for drafting H.R.5050, and he made a lot of arguments during our podcast as to why H.R.5050 is the answer in so far as consumer protection is concerned. And he cited a number of studies that show that a majority of Americans, even including Republicans are in favor of the bill.

Alan Kaplinsky:

Well, we're going to hear a different perspective today, and that's why we have Bill on the program. Bill has done a lot of writing about H.R.5050, and has done a lot of certainly thinking about the bill. First, before we explore the issues that you have in the bill with respect to the bill is let me summarize what the bill does. It's not very lengthy. Number one, I find it very interesting that it's called the Veterans and Consumers Fair Credit Act, sort of wish they would ditch the words, veterans and, because there already is a bill that covers active duty members of the military. And while they want to cover veterans here, last time I looked veterans were consumers. So it seemed to me like that title of the bill was intended to just include a buzzword that seems to resonate with a lot of people on the Hill. Would you agree with that?

Bill Himpler:

I would, very much so, and I've had a number of times to interact with Chris Peterson, who I think is back to being a law professor out in Utah, but I'm not exactly sure. I, for one never claimed credit for having drafted legislation, generally speaking, it's members of Congress and their staff that do that, I only make suggestions. But that being said, if he's willing to claim credit for it, the fact that you've got a bill that has in its title, veterans, and it doesn't do anything specifically for veterans differently than any other consumer as you so well put it, it's not surprising that you had a number of veterans groups come out in opposition to the legislation for trying to use the veterans in a fashion that doesn't really provide any meaningful benefit that specifically apply to veterans. So if he's taking credit for the drafting, right in the title of the bill, he's got some problems.

Alan Kaplinsky:

Yeah. Well, I was unaware of the fact that some veterans took umbrage at the title, but I'm glad to hear that.

Bill Himpler:

Yeah. I could get you the letters that went up to Capitol Hill when this was first introduced to calling out the authors of the legislation for using veterans, without providing veterans specific benefits.

Alan Kaplinsky:

Right. Right. Well, anyway [crosstalk 00:08:12]

Bill Himpler:

And I think that's warranted. You don't want to take advantage of the veterans like that.

Alan Kaplinsky:

Yeah, of course. So the bill essentially incorporates by reference the provision in the Military Lending Act, which established a 36% interest rate cap on loans or extensions of credit that are made to active duty members of the military or their dependents. Fortunately, that's the only part of the Military Lending Act that got incorporated by reference. There are a number of restrictions and prohibitions on extending credit to members of the military or their dependents. And this particular bill only deals with the APR restriction or more appropriately it's called the MAPR, the Military APR, which includes in the calculation of the finance charge and the MAPR, a number of other fees and charges, which are not considered finance charges under the Truth in Lending Act, and therefore are not reflected in the normal APR under the Truth in Lending Act.

Alan Kaplinsky:

The only exceptions in the bill are for residential mortgages, a loan procured in the course of purchasing a car or other personal property, when that loan is offered for the express purpose of financing the purchase and is secured by the car or personal property procured. So in other words, it covers car purchased money, car loans, auto title loans on the other hand would be covered by the 36% rate cap.

Bill Himpler:

Alan, sorry to interrupt, I think you meant to say that auto loans would be excluded, but title loans would be covered.

Alan Kaplinsky:

This bill, if it were to become law would absolutely wreak havoc with consumers. And I believe, notwithstanding what Professor Peterson had to say during my interview with him, would lead to a serious constriction in the availability of credit, particularly for consumers that are of low and moderate income.

Alan Kaplinsky:

I'd like to get your thoughts on that. Particularly Professor Peterson's bold statement that this would not lead to any constriction and credit at all. And that all it would do is prevent people who deserved not to get loans, but to receive help from the federal government or the states, maybe ought to be on welfare and other programs. It would prevent them from getting credit, but according to Professor Peterson, they shouldn't get credit to begin with. So how do you respond to that, Bill?

Bill Himpler:

Oh boy, what an opportunity. I think first and foremost, we share the concerns of the authors of this legislation in both The House and the Senate in terms of wanting to protect consumers from predatory practices, unfair practices and the likes. So in terms of that, we stand shoulder to shoulder with them. But I couldn't disagree with Chris more on his assertion. One, I would venture to guess that Chris has never made a consumer loan to anybody. He's never underwritten a loan to anybody in his professional life. I'm not going to say that I have, but I represent members companies who do, so I'm in very close contact with them and understand the constraints that they're working under.

Bill Himpler:

Quite frankly at a 36% rate cap, you're not going to have availability of credit for small dollar loans, all the way up to $2,500. APR is a matter of size of the loan and length of the term. Let me give you a little example. Can my members make a loan at 36%? They sure can, but it's going to be above 2,500. Now you mentioned low and moderate income folks, I'm talking about, not even those guys. Somebody who works on a construction site as general contractor needs to put new tires on his F150. We have some States that have 36% rate caps. We have others that don't. Let me give you two examples.

Bill Himpler:

Let's say you need $700 to put new tires on the truck. In Texas, you can go out and get a loan for $700, it's going to have an APR that exceeds 36%. That same contractor, if he lives in Pennsylvania, because there's a 36% rate cap, he or she can't take out $700 because there's a rate cap associated with that. They're forced to take out a much larger loan to the tune of about $3,000. We're talking about taking out a loan that's four times the size of what you need. APRs aren't the dangerous part, it's the loan size, the loan amount, the time that the customer takes it out. That's what puts the customer at risk. APRs are just a measurement tool to compare different like loans to each other.

Alan Kaplinsky:

Yeah. Well now, Bill, do you have any studies that can back up what you've said? Namely, that if a bill like this were to pass, people simply wouldn't be able to get certain kinds of small loans.

Bill Himpler:

I like to think that probably the authoritative study in this space was put forward by the National Commission on Consumer Credit almost 50 years ago. And at the time, that commission had determined that a break-even point on a $1000 loan for 12 months was 70% APR. Nothing has changed, in fact things have probably gotten more exacerbated with the time value of money in the subsequent 50 years. But 50 years ago, it was determined by a national commission that just breaking even on something the size of a $1000 was 70% APR, almost double what they're talking about.

Alan Kaplinsky:

And the overhead 50 years ago, putting aside the interest rate, but the cost of originating the credit had to be a lot less than it is today.

Bill Himpler:

Sure. Yeah. The proponents of 36 came up with 36%, this is nothing new. They came up with 36% interest, which is what was agreed to almost a 100 years ago when we're talking about small dollar loans. That is been replaced by an APR, which is as much smaller increments than actual interest. And so they're trying to use a calculation that is over a 100 years old. I can tell you that the price of a loaf of bread, the minimum wage, the tires that I mentioned have all gone up over the last 100 years, but the folks that are proponents of 36 still want to use 36, which was put in place over a 100 years ago.

Alan Kaplinsky:

Right. Now, there's a second study, am I right? In addition to the study that you identified that was done 50 years ago, am I right? That APHSA itself looked into this.

Bill Himpler:

Yeah, sure. There's a couple different studies, one is a book by a Professor Tom Miller from Mississippi State University who holds the Jack Lee Chair of Consumer Finance. He put out a book that incorporates both the national commission study that I mentioned a moment ago, as well as some of the research that we did here at APHSA that we submitted to the Pentagon when the Military Lending Act first came out in 2005 and with regulations in 2007, and then the regulations that were updated in 2015, 16 and 17, which essentially confirmed what was in the national commission report that in order to live a 36% APR all in APR cap, which is confusing to consumers to begin with, because the point of APR is that you only have one definition of APR, that the smallest loan size that the consumer finance companies could make would be in the 2,500 to $3,000 range.

Alan Kaplinsky:

Okay. So one of the things that you hear all the time, and I heard it from Professor Peterson, that if a 36% rate cap is good for active duty members of the military, why shouldn't it apply to everybody? What's special about active duty members of the military that makes them deserving of that rate cap?

Bill Himpler:

Well, it's interesting one that this was put in place in Defense Authorization Act over 10 years ago. And it makes perfect sense politically, you try and apply something to the military, then you apply it to teachers and first responders and widows and orphans. And it makes a lot of sense in that regard. But I guess to get to the heart of your question, if it's good enough for the military, why shouldn't it be good enough for everybody else? The easy answer is that there is no empirical data yet put forward by either the consumer advocates like Professor Peterson or the Pentagon that has shown the impact of these regulations from 2015, until today on active military and their families. We're talking about a statutory legislation, statutory provisions and regulations that currently apply to a million active members of the military and their families. And now by extension, applying that to the entire economy of 330 million American consumers without any data. It boggles the mind.

Alan Kaplinsky:

Yeah. You would think before they extended the law so broadly, they would have at least looked at the data from this controlled universe of active duty members of the military to see, has it actually helped them, or has it hurt them? Has it resulted in certain members of the military being unable to get the credit that they need and looking to sources on the internet that are offering illegal loans? We have no idea what's going on.

Bill Himpler:

I think probably the most telling aspect of this goes back a few years when Holly Patraeus headed up the office of service member at the CFPB under Richard Cordray. And they had a conference and they had a number of panelists that represented on base banks and on base credit unions to ask them what the impact of the Military Lending Act was on service personnel. And every one of them said that we can't make a loan profitably under 36%.

Bill Himpler:

Now, notably the video coverage of that conference in that particular panel has disappeared from the CFPB website. There was only one panelist, a federal credit union in North Carolina, I believe that said that they could do it profitably, but they were a federal credit union for state employees. Well, if your entire lending base is state employees where you know where everybody works, heck I could make loans profitably under that parameter.

Alan Kaplinsky:

Yeah. Well, it's really strange that they took that off the website of the Bureau. Hopefully it's been preserved somewhere so that it can be pulled out at the appropriate time, Bill. So let's talk a little bit of politics here. The bill got introduced November 12th of last year in The House and the Senate, it hasn't moved as yet. There were rumblings that I heard a couple of months ago that The House might try to move it. House of course is right now controlled by the Democrats. What do you think is going to happen with the bill? Do you think nothing's really going to happen until we see what happens during the election?

Bill Himpler:

Let's see if I can understand you, nothing's going to happen until something happens, right? Let me go back to what I said earlier that we share the objectives of the authors of the legislation. We've been in discussions with members of The House Financial Services Committee on both the Democrat side and the Republican side. Quite frankly, I think some of the members on the Democratic side have been a little surprised to hear that there's no data that shows what the impact of the current provisions of law have been on the military and their families. There's a, I think very naturally a confusion about some of these issues. We're talking with a lot of policymakers and particularly staff that have use of low interest credit cards that have got a lot of benefits and rightfully so, but those folks don't have an appreciation for the importance of installment lending to the American consumer over the last 100 years.

Bill Himpler:

And so we've really tried to educate members and their staff about the beneficial forms of consumer credit in this space. In fact, I've talked to members on the committee on both the Republican side and particularly on the Democratic side, who very fondly recall making family purchases of a washer and dryer or refrigerator using the old household model, if you will, as they refer to it. But it's essentially the same. They understand that these are not debt traps, that they're fixed terms, fixed interest, fixed payments. And if you perform on the loan, you improve your credit score. It's a very reasonable and safe means of financing household needs.

Alan Kaplinsky:

Yeah. So I think another thing that people ought to be aware of Bill, is the fact that APHSA is a trade association of what I would describe as conventional consumer finance companies. Or I know you have banks that are members too, but at least the organization started with non-banks. You're not a trade association of payday lenders or auto title lenders. Well, and indeed I don't even know if you allow those kinds of lenders to be part of APHSA am I right?

Bill Himpler:

Yeah, we do not have any payday lenders [crosstalk 00:26:22].

Alan Kaplinsky:

Right. I wondered if you might describe for our listeners who aren't completely aware of APHSA who are your members?

Bill Himpler:

Sure. As I said, we've been around for over a 100 years, we were actually formed as an association between the original consumer advocates and industry folks to develop a business model that provided for sustainable profit and protections to the consumer. And that's where household finance sprung out of. So by and large, it is a very labor intensive product that you have to do a lot of handholding with the consumer. I don't think the banks are necessarily positioned to be in that space. In fact, a pilot project by the FDIC essentially concluded as much, everybody has a different space to play in this. We love our banks, they're a lot of them are involved in vehicle finance, credit cards, mortgage, and personal loans, the personal loan space that they participate in are not going to be larger personal loans. And it's really important-

Alan Kaplinsky:

Many of them secure by home equity [crosstalk 00:27:47].

Bill Himpler:

Exactly, exactly. And it's really important for policy makers and regulators to understand that there are many different components when it comes to consumer credit. That's all we do here at APHSA, is consumer credit. And one, it's easier on my mind to have us a single focus, but it's also imperative because so much is at stake.

Alan Kaplinsky:

Right. Right. So Bill, I'm wondering whether any consumer advocates have yet come out against this bill on the theory that this is really going to hurt their constituents? Or are we seeing that typical knee jerk reaction of the consumer advocacy groups that, "Usury limits are good, anything that lowers the interest rates are good. And we're not that concerned about the collateral damage that might result by virtue of a lot of consumers being blocked from obtaining conventional credit?"

Bill Himpler:

Well, I don't know that any consumer advocates have come out and voiced the opposition to the legislation. That's not necessarily a position anybody wants to be in when you're trying to work with members of the Hill and members of the majority. But I think there are a few that have concerns, the Center for Financial Services Innovation has been very creative in terms of what they've said in terms of protecting availability of credit in the small dollar space. I know Pew Research has had other ideas of ways to address the same concerns that these policy makers have raised in altering this legislation. So yeah, I think it's, some of the folks that aren't rushing into support is something worth keeping in line, as opposed to folks that come out and oppose outright.

Alan Kaplinsky:

Yeah. Yeah. I suppose that the real concern that I have heard is not that this legislation is going to go anywhere this year, but if the Democrats win the White House, if they control The House and the Senate, then this becomes a more serious problem to deal with. Would you agree with that?

Bill Himpler:

Yeah, I think the temperature definitely goes up, but as we noted earlier in our discussion, you've got a number of members on the Democratic side of the aisle that are in the majority that already have concerns about what the impact will be. And the legislation was scheduled to be marked up in January and February. And now we're looking at April and I don't want to be too critical because I think that they are taking a hard look at things in terms of ways that they can provide protections to consumers, but protect the availability of credit. And that's all we can ask of them.

Alan Kaplinsky:

Right, right. Right. Well, I can't resist the temptation Bill, with you being on our-

Bill Himpler:

Resist Alan. Resist.

Alan Kaplinsky:

I've got to ask you, in addition to this bill, what are the other burning issues that are keeping you up at night? If there are any.

Bill Himpler:

Yeah. [crosstalk 00:31:58].

Alan Kaplinsky:

Are there any others?

Bill Himpler:

There's always plenty. We already talked about arbitration. That continues to be a challenge. There's the Telephone Consumer Protection Act, which is also known as the, do not call list, very popular with policy makers in their constituents, but regulations that came out of the FCC make it virtually impossible for us to contact customers with whom we have an existing relationship, even to let them know when they've got a problem with their account, or we want to inform them of a new benefit. So those are a couple of things that continue to plague me.

Alan Kaplinsky:

Yeah. The other thing that concerns me, I share your concerns about the things you identified, but is this development, at least in California and New York of what I would describe as mini-CFPB legislation. And indeed I know that former director, Richard Cordray has been very actively involved in this California legislation. Any reaction to that phenomenon?

Bill Himpler:

Sure. We've actually got a loan compliance symposium coming up, I believe in the first part of June. And at the risk of letting the cat out of the bag, we're at least in discussions with Richard Cordray about coming to speak to that conference. Because I think he's got a lot to say in terms of his involvement with the CFPB and now with the California legislation.

Bill Himpler:

It does cause me some concern in terms of these mini-CFPBs. We saw some of that with the CFPB when Mr. Cordray was there dealing with a dealer assisted financing, that was an issue that they tried to address, I think, prematurely without actually talking to the stakeholders. And so it was a discussion that went a heck of a lot longer than it needed to.

Bill Himpler:

I guess my concern is that in establishing these mini-CFPBs to being established in states where it's one party control. And what we've got is a lot of either legislation or regulation put in place, in search of a problem that doesn't exist. To the extent that we've got actual data that shows that consumers are concerned about something. And I'll take the CFPB, for instance. When you had a changing of the guard over there to acting director Mulvaney and now director Kraninger, they changed focus to debt collection. Now, I'm entirely happy with the proposal they put forward? No, I'm not and our members aren't. But at the same time, at least this is an issue where there were a number of complaints from consumers.

Bill Himpler:

So that to me is where the focus needs to be. Chasing after shadows and ghosts like installment lending, if you ask Cordray, Cordray even testified before The House Financial Services Committee that traditional installment lenders are a good and safe form of consumer credit, and asked, "Where's the fire that needs to be put out?" The CFPB staff couldn't point to anything.

Bill Himpler:

So that's my concern with many CFPBs, is we're going to see this at the state level. Somebody finds an issue that they can make a lot of political hay and impact access to credit when there's no there, in terms of a problem.

Alan Kaplinsky:

Right. Right. Okay. Well Bill, want to thank you again for being my guest today on our podcast. I really appreciate your taking the time out of your busy schedule. And I hope you become a frequent guest on our show as other issues arise, whether it be this bill heating up at some point or some other important issue that is of concern to the consumer finance industry. So thank you, Bill.

Bill Himpler:

Well, thank you for having me and I look forward to our next chat, Alan.

Alan Kaplinsky:

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